

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ZYNGA GAME NETWORK, INC.,

No. C-09-3636 SC (EMC)

Plaintiff,

v.

**ORDER RE JOINT LETTER OF  
OCTOBER 25, 2010**

GREEN PATCH, INC.,

**(Docket No. 164)**Defendant.  

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In accordance with this Court's order of October 15, 2010, *see* Docket No. 136 (order), the parties have provided a joint letter providing an update as to their dispute regarding RFPs Nos. 160-62. Having reviewed the joint letter, the Court hereby rules as follows.

A. RFP No. 160

In RFP No. 160, Zynga asks Green Patch to produce documents sufficient to identify efforts made by Green Patch, Playdom, or Disney to encourage users of the allegedly infringing games to play other Green Patch, Playdom, or Disney games. In the joint letter, Green Patch states that it is willing to provide documents "sufficient to show if users from the [allegedly infringing games] cross-promoted into a Playdom game." Joint Letter at 2. In effect, Green Patch is willing to provide information about the results of the cross-promotion.

The problem for Green Patch is that the document request is broader (albeit not as broad as Zynga claims<sup>1</sup>). More specifically, the request asks for information about "efforts" to cross-

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<sup>1</sup> According to Zynga, the request asks for documents "relating to the topic of cross-promotion." Joint Letter at 2.

1 promote. While the term “efforts” is somewhat ambiguous, the basic thrust of the document request  
2 is still understandable – *i.e.*, Zynga wants to know what was done to try to get users of the allegedly  
3 infringing games to play other games. For example, when a user played an allegedly infringing  
4 game, was there an advertisement on that game promoting other games? Was a user of an allegedly  
5 infringing game ever contacted via e-mail or other means to be given information about other  
6 games?

7 Because the basic thrust of the document request is understandable, the Court shall compel  
8 Green Patch to produce responsive information. However, as Green Patch points out, the document  
9 request asks only for documents “sufficient to identify.” Therefore, Green Patch need only produce  
10 enough documents to show the kind and extent of efforts it engaged in to cross-promote.

11 B. RFP No. 161

12 In RFP No. 1, Zynga asks Green Patch to produce documents sufficient to identify the  
13 financial success of any efforts by Green Patch, Playdom, or Disney to cross-promote. In the joint  
14 letter, Green Patch states that it is willing to provide “a report of how much money users of Green  
15 Patch games at issue spent in Playdom games after playing the Green Patch games.” Joint Letter at  
16 2. In response, Zynga argues that Green Patch should provide information about money made “not  
17 just directly through users” but also money made from other sources – *e.g.*, “advertisers or offer-  
18 providers.” Joint Letter at 2.

19 The Court shall not require Green Patch to provide the additional information Zynga seeks.  
20 While Zynga has shown a “sufficient plausibility” that there is a causal connection between the  
21 infringing games and profits from the noninfringing games with respect to users (*i.e.*, cross-  
22 promotion), *Systems Am., Inc. v. Rockwell Software, Inc.*, No. C 03-02232 JF (RS), 2007 WL  
23 1593219, at \*1-2 (N.D. Cal. June 1, 2007) (noting, *inter alia*, that plaintiff had introduced un rebutted  
24 evidence that the defendant “touted its ability to offer [the infringing product] in connection with its  
25 sales and marketing of all the products at issue”), it has not made the same showing with respect to,  
26 *e.g.*, advertisers.

27 C. RFP No. 162

28 The parties have resolved their dispute with respect to RFP No. 162.

1 D. Timing of Production for RFPs Nos. 160-62

2 Zynga asks that Green Patch be compelled to provide information responsive to RFPs Nos.  
3 160-62 by October 27, 2010. This request is denied. These document requests were first served on  
4 September 3, 2010. The parties first raised the discovery dispute regarding the requests on October  
5 13 and 14, 2010. The Court issued its order requiring the parties to further meet and confer on  
6 October 15, 2010. The parties reported back on their efforts on October 25, 2010. Given this  
7 timeline, the Court concludes that it is unreasonable to give Green Patch only two days to produce  
8 responsive documents.

9 On the other hand, the Court shall not give Green Patch an indefinite period of time to  
10 produce responsive documents. The Court shall give Green Patch until Monday, November 1, 2010,  
11 to produce documents required by this Court's order.

12 E. RFPs Nos. 163-64


13 Although Green Patch has a duty to supplement under Federal Rule of Civil Procedure 26(e),  
14 the Court does not entertain Zynga's argument that Green Patch is not meeting that duty with respect  
15 to RFPs Nos. 163 and 164. As Green Patch notes, any request for relief with respect to these  
16 requests is not timely. Discovery closed on October 6, 2010. Under the Civil Local Rules, Zynga  
17 was required to file a motion to compel seven days later. Zynga could have moved to compel  
18 further responses to RFPs Nos. 163 and 164 but failed to do so.

19 As a practical matter, the Court notes that Zynga is not irreparably prejudiced because of its  
20 untimely request for relief. The critical information sought in RFPs Nos. 163 and 164 is already  
21 covered by RFPs Nos. 160-62 and already subject to this Court's order of October 26, 2010.

22 This order disposes of Docket No. 164.

23  
24 IT IS SO ORDERED.

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26 Dated: October 26, 2010

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EDWARD M. CHEN  
United States Magistrate Judge